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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
MUR 6338) DISMISSAL AND
Dan Powers) CASE CLOSURE UNDER THE
Dan Powers for Congress) ENFORCEMENT PRIORITY SYSTEM
and Candace Robinson, as treasurer)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Act, and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6338 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6338.

In this matter, the complainant, Carolyn Sampson, alleges that Dan Powers for Congress and Candace Robinson, in her official capacity as treasurer ("the Committee"), the campaign committee of congressional candidate Dan Powers,¹ may have inaccurately reported certain loans as having been made by the candidate and may also have failed to disclose

¹ Mr. Powers unsuccessfully sought to represent Minnesota's Second Congressional District.

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1 disbursements for certain campaign expenses, in violation of 2 U.S.C. § 434(b) and 11 C.F.R.
2 § 104.3.

3 First, the complainant alleges that the candidate did not appear to have sufficient
4 personal funds to make \$36,200 in loans reported by his Committee during Mr. Powers'
5 campaign.² Specifically, the complainant, who states that she compared Mr. Powers' Financial
6 Disclosure Statement, which was filed with the U.S. House of Representatives, with the
7 Committee's FEC financial disclosure reports, asserts that she "cannot reconcile the
8 candidate's personal assets with loans he claims to have made to his campaign." Therefore,
9 the complainant concludes, "there is no proof that Mr. Powers loaned this money [\$36,200]
10 from his personal funds." She further states that, if Mr. Powers had borrowed from a
11 certificate of deposit, as reported in a newspaper article, available at
12 <http://www.startribune.com/politics/national/99150134.html>, the interest and repayment terms
13 should have been disclosed on a Schedule C-1, as required by 11 C.F.R. § 104.3(d). Finally,
14 the complainant notes that the candidate's Financial Disclosure Statement does not disclose
15 any certificates of deposit owned by him or income the candidate allegedly received from Sela
16 Roofing, the candidate's employer in 2008.³

² The Committee's disclosure reports show that the candidate made three loans to the Committee: a \$1,200 loan on January 25, 2008, a \$10,000 loan on December 31, 2009, and a \$25,000 loan on June 25, 2010.

³ Appended to the complaint is what appears to be Mr. Powers' House of Representatives Financial Disclosure Statement for the time period January 1, 2009 through June 28, 2010. Among other items, the candidate reports income and assets totaling between \$43,001 and \$78,000 (\$28,000 in unemployment compensation and an inheritance in the \$15,001-\$50,000 range) and states that he owned two businesses and was employed as a sales/production manager at Sela Roofing. We note that the copy of the Financial Disclosure Statement submitted by the complainant includes five pages, a first page and four pages marked "Page 3 of 6" through "Page 6 of 6," with the second page omitted. We contacted the House of Representatives to obtain a more complete copy of Mr. Powers' Financial Disclosure Statement, but that Statement also lacked what appears to be the second page.

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1 Second, the complainant alleges that the Committee's financial disclosure reports do
2 not disclose disbursements for what she describes as "customary campaign expenses,"
3 including costs for telephones, office utilities, the campaign post office box, and office
4 supplies. In addition, the Committee's reports disclose no disbursements for the following:
5 access to the Voter Activation Network ("VAN") database,⁴ which the complainant claims
6 costs \$5,000 per candidate and which Mr. Powers allegedly used to send email; payments for
7 the Committee's sponsorship of the annual Hubert H. Humphrey fundraising dinner, which
8 allegedly cost \$500; two tickets to the Humphrey fundraiser, at a cost of \$125 per ticket; and
9 fees for parades in which Mr. Powers participated.

10 Mary Breitenstein, the Committee's campaign manager, filed a response, which
11 includes supporting documents such as receipts and check stubs. With respect to income that
12 was purportedly derived from Mr. Powers' employment with Sela Roofing, Ms. Breitenstein
13 asserts that the candidate did not work for Sela Roofing during the time period of January
14 1, 2009 through June 28, 2010, and that he listed his inheritance as an asset from which,
15 presumably, Mr. Powers could draw when making loans to his campaign.⁵

16 Regarding the allegations that certain campaign expenses were not disclosed, the
17 response maintains that the Committee accounted for all of its expenses, itemizing those
18 exceeding \$200, as required by 2 U.S.C. § 434(b)(5) and 11 C.F.R. § 104.3(b)(4), and
19 including the unitemized portion in the totals for the various categories of disbursements on

⁴ According to its website at <http://www.ngpvan.com/>, VAN (now called "NPG VAN") provides computer technology for candidates and campaigns.

⁵ The response also references an "error" on an earlier FEC report, which it states would be corrected in an amended disclosure report. Although the "error" is not identified further, it appears to refer to the omission of the \$1,200 candidate loan made on January 25, 2008, which has now been reflected in the Committee's amended 2009 Year End and amended 2010 April Quarterly Reports.

1 the Detailed Summary Pages of its financial disclosure reports. The Committee's total
2 disbursements for "Operating Expenditures," which are reported on line 17 of the Detailed
3 Summary Pages of its reports, are greater than the totals for its itemized disbursements, which
4 indicate that the amounts listed on the Detailed Summary Pages include unitemized
5 disbursements.

6 With respect to what the complainant terms "customary campaign expenses,"
7 Ms. Breitenstein explains that Mr. Powers had been endorsed by the Minnesota Democratic-
8 Farmer-Labor Party ("DFL"),⁶ and that his campaign worked with the DFL Coordinated
9 Campaign⁷ and thus had the "use of certain shared office supplies, phones, printers, and staff."
10 Ms. Breitenstein also states that the Committee paid rent to the DFL Coordinated Campaign,
11 which is reflected on the Committee's reports as itemized disbursements. In addition, a check
12 stub submitted with the response, which includes the notation "May rent (incl. utilities, phones
13 & supplies)," suggests that the Committee's rent payments to the DFL may have included the
14 Committee's portion of most or all of the shared expenses.⁸ The Committee's disclosure
15 reports also reflect disbursements for campaign expenses such as office supplies, postage,
16 printing and payroll (see 2010 April, July and Pre-Primary, and October Quarterly Reports).

17 In response to the remaining allegations, Ms. Breitenstein states that Mr. Powers, as the
18 DFL-endorsed candidate, was listed on the Hubert H. Humphrey fundraising dinner program
19 at no cost, and that the Committee reported the cost of the two tickets for the dinner as an

⁶ The DFL's website states that the DFL was created in 1944 after a merger between the Minnesota Democratic Party and the Farmer-Labor Party, see <http://dfl.org/about/history>.

⁷ The entity referred to appears to be the Minnesota 2nd Congressional District DFL Committee ("2nd CD DFL").

⁸ See 2010 July Quarterly Report (Schedule B, Jun. 6 & 15, 2010) and 2010 Pre-Primary reports (Schedule B, Jul. 16, 2010). Disclosure reports do not reflect any in-kind contributions from the 2nd CD DFL to the Committee.

1 itemized expense on its 2010 July Quarterly Report. In addition, a check stub provided with
2 the response shows a payment of \$250 by the Committee to the DFL for the tickets. The
3 response also states that the complainant "is incorrect in her assertions about our access to . . .
4 VAN," and that the Committee, which had limited access to "the DFL Party voter file,"⁹ was
5 working with the DFL to determine the amount of the payment after the primary. The
6 response further states that payments to NPG, which was the Committee's primary voter
7 database, are listed in the Committee's disclosure reports as itemized expenses. Finally, with
8 respect to Mr. Powers' participation in parades, the response states that all registration fees
9 associated with the parades, whether itemized or unitemized, were included in its FEC reports.

10 Based on the available information, it appears that there is insufficient information to
11 conclude that the candidate lacked sufficient funds to make personal loans to his committee.
12 Further, it appears that the Committee disclosed most or all of the expenses incurred in
13 connection with Mr. Powers' campaign. Accordingly, under EPS, the Office of General
14 Counsel has scored MUR 6338 as a low-rated matter and therefore, in furtherance of the
15 Commission's priorities as discussed above, the Office of General Counsel believes that the
16 Commission should exercise its prosecutorial discretion and dismiss this matter. *See Heckler*
17 *v. Chaney*, 470 U.S. 821 (1985).

18 RECOMMENDATIONS

19 The Office of General Counsel recommends that the Commission dismiss MUR 6338,
20 close the file, and approve the appropriate letters.

⁹ According to a document entitled "DFL Lingo," which is available on the Internet, "the Minnesota DFL Party Voter File" or "VAN" is a resource that "houses valuable data for voters so that campaigns can target messages and other resources."

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3/15/11

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